

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARQUETH WILSON,)	Case No.: 1:18-cv-01245 - LJO -J LT
)	
Plaintiff,)	ORDER DENYING WITHOUT PREJUDICE
)	PLAINTIFF'S MOTION FOR ISSUANCE OF
v.)	SUMMONS
)	
BEHR PAINT, et al.,)	(Doc. 4)
)	
Defendants.)	
)	
)	

Marqueth Wilson seeks to proceed with an action against Behr Paint and Masco Corporation, asserting the defendants mislabeled paint cans purchased by Plaintiff, and are liable for violations of Texas law. The Court reviewed the allegations of his complaint, and found Plaintiff failed to allege facts supporting a conclusion that the amount in controversy exceeds \$75,000 and that the Court has jurisdiction over the action. Therefore, the Court dismissed the complaint with leave to amend. (Doc. 3)

On November 13, 2018, Plaintiff filed a motion for issuance of summons to the defendants named in his complaint. (Doc. 4) Plaintiff informs the Court that he is “actively amended his complaint and will file his ‘First Amended Complaint’ before November 21, 2018.” (*Id.* at 2) He notes that he served the complaint upon the defendants when he filed it with the Court, and Plaintiff contends “the time period for which Defendant could have waived Service has long ago passed.” (*Id.*) Plaintiff contends the defendants named in the original pleading “should be compelled to answer the complaint filed.” (*Id.*)

Significantly, because the Court dismissed the complaint with leave to amend, there is no operative pleading for the defendants to be served. In addition, the matter of the Court's jurisdiction has not been resolved. Once Plaintiff files an amended complaint, the pleadings will be again be reviewed. *See* 28 U.S.C. 1915(e)(2); *see also Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) (an amended complaint supersedes the previously filed complaint). If Plaintiff alleges facts sufficient to support his claims for relief *and* invoke this Court's jurisdiction, the Court will direct Plaintiff to complete service documents for the pleading to be served by the U.S. Marshal. Until that time, it would be premature for the Court to issue summons or new case documents in this action

Based upon the foregoing, the Court **ORDERS**: Plaintiff's request for issuance of the summons (Doc. 4) is **DENIED** without prejudice.

IT IS SO ORDERED.

Dated: **November 15, 2018**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE